

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

RICHARD L. PERRY,
Plaintiff,
vs.
MILLER, et al.,
Defendants.

1:03-cv-05137-AWI-SMS-P

**FINDINGS AND RECOMMENDATIONS
RE DISMISSAL OF ACTION**
(Doc. 58)

Plaintiff, Richard L. Perry ("plaintiff"), is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 15, 2005, the court issued an order requiring plaintiff to show cause why this action should not be dismissed for failure to prosecute, within thirty (30) days from the date of service of that order. The thirty-day period has passed, and plaintiff has failed to comply with or otherwise respond to the court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all

sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

1 In the instant case, the court finds that the public's
2 interest in expeditiously resolving this litigation and the court's
3 interest in managing the docket weigh in favor of dismissal as this
4 case has been pending since 2003. The third factor, risk of
5 prejudice to defendants, also weighs in favor of dismissal, since a
6 presumption of injury arises from the occurrence of unreasonable
7 delay in prosecuting an action. Anderson v. Air West, 542 F.2d
8 522, 524 (9th Cir. 1976). The fourth factor -- public policy
9 favoring disposition of cases on their merits -- is greatly
10 outweighed by the factors in favor of dismissal discussed herein.
11 Finally, a court's warning to a party that his failure to obey the
12 court's order will result in dismissal satisfies the "consideration
13 of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at
14 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The
15 court's order of March 15, 2005, expressly stated: "Plaintiff is
16 forewarned that his failure to comply with this order will result
17 in a Recommendation that the action be dismissed, without
18 prejudice, for failure to comply with a Court Order and failure to
19 prosecute the action." Thus, plaintiff had adequate warning that
20 dismissal would result from non-compliance with the court's order.

21 Accordingly, the court HEREBY RECOMMENDS that this action be
22 DISMISSED, without prejudice, for plaintiff's failure to obey the
23 court's order of March 15, 2005, and failure to prosecute this
24 action.

25 These Findings and Recommendations are submitted to the United
26 States District Judge assigned to the case, pursuant to the
27 provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**
28 after being served with these Findings and Recommendations,

1 plaintiff may file written objections with the court. Such a
2 document should be captioned "Objections to Magistrate Judge's
3 Findings and Recommendations." Plaintiff is advised that failure
4 to file objections within the specified time may waive the right to
5 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
6 (9th Cir. 1991).

7
8 IT IS SO ORDERED.

9 **Dated: May 3, 2005**
10 icido3

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE